

## Message Text

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ACTION STR-07

INFO OCT-01 IO-13 ISO-00 STRE-00 AF-10 ARA-10 EA-10  
EUR-12 NEA-10 OIC-02 AGRE-00 CEA-01 CIAE-00  
COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05  
L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05  
SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01  
DOE-15 DOTE-00 HEW-04 MCE-00 DOEE-00 SSO-00 /172 W  
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P 121301Z APR 78  
FM USMISSION GENEVA  
TO SECSTATE WASHDC PRIORITY 8247  
INFO ALL EC CAPITALS

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USMTN  
ACTION STR PASS ELECTRICALLY  
STR PASS CODEL

E.O.11652:N/A  
TAGS: MTN, EEC, ETRD  
SUBJECT: MTN: US/EC BILATERAL ON REQUESTS AGAINST EC  
MEMBER STATE NONTARIFF MEASURES (NTM'S)

1. SUMMARY. U.S. MTN DEL (MCNAMARA AND MARSH) MET APRIL 4  
WITH EC COMMISSION AND MEMBER STATE REPS FOR DETAILED  
EXAMINATION OF MEMBER STATE NTM'S ON U.S. REQUEST LIST.  
EC COMMISSION REP (ABBOTT) STATED THAT COMMISSION DID NOT  
HAVE COMPETENCE TO NEGOTIATE ON THESE MEASURES, BUT WOULD  
ACT IN A COORDINATING ROLE IN US/MEMBER STATE DISCUSSIONS.  
(HE ALSO ACKNOWLEDGED EC COMMISSION INTEREST IN DISCUS-  
SIONS BECAUSE OF EFFECT SOME OF THESE MEASURES HAVE ON  
INTRA-EC TRADE.) MEMBER STATES WILL PROVIDE FURTHER  
INFORMATION ON SPECIFIC PRACTICES (MOST REPS WERE NOT WELL-  
INFORMED AT THIS STAGE), AND GENERALLY SEEMED RECEPTIVE  
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TO U.S. ARGUMENTS. WE ENCOUNTERED DEFENSIVENESS MOST  
OFTEN WHEN U.S. WAS ALLEGING DE FACTO RATHER THAN DE JURE  
GOVERNMENT DISCRIMINATION, E.G., U.S. REQUEST RE FRENCH  
RESTRICTIONS ON AIRCRAFT PURCHASES. END SUMMARY.

2. MTN DEL MET WITH COMMISSION AND MEMBER STATE REPS FOR  
DETAILED EXAMINATION OF U.S. REQUESTS ON MEMBER STATE

NTM'S. ITEM-BY-ITEM REVIEW STARTED WITH MEASURES OF A  
SIMILAR CHARACTER MAINTAINED BY MORE THAN ONE MEMBER STATE:

(A) DISCRIMINATORY ROAD TAXES (BELGIUM, FRANCE,  
ITALY, FRG, NETHERLANDS). U.S. PRESENTATION DREW HEAVILY  
ON USEFUL BACKGROUND INFORMATION SHOWING COMPARISON OF  
COUNTRY TAXES ON VEHICLES HAVING EQUIVALENT FUEL CONSUMP-  
TION RATINGS. WE STATED THAT WE DO NOT CHALLENGE TAX  
SYSTEMS BASED ON FUEL CONSUMPTION, BUT THAT TAX SYSTEMS  
UNDER DISCUSSION APPEARED TO BE BASED ON OTHER CRITERIA  
SUCH AS HORSEPOWER, WEIGHT AND CYLINDER CAPACITY.  
BELGIAN REP (SERVAIS) NOTED THAT HIS COUNTRY'S SYSTEM WAS  
REVAMPED ON DECEMBER 23, 1974, AND THAT THE CHANGES MADE  
TOOK INTO ACCOUNT PREVIOUS U.S. DEMARCHES. NEW SYSTEM IS  
BASED UPON HORSEPOWER RATING OF VEHICLES ("DIN RATING").  
THE HIGHEST CLASS WITHIN THE RATING SYSTEM WAS 20 DIN,  
WHICH HE CLAIMED WAS ABOUT THE MINIMUM RATING FOR U.S.  
AUTOS. HE EXPRESSED PERSONAL SURPRISE THAT U.S. WAS  
STILL PROTESTING THESE MEASURES SINCE MANY U.S. CARS NOW  
WERE SELLING BELOW THE COST OF COMPARABLE EUROPEAN  
MODELS IN BELGIUM. IN COMPARING U.S. AND BELGIAN DATA  
ON ROAD TAXES APPLICABLE TO CERTAIN MODEL CARS, LARGE  
DIFFERENCES WERE FOUND. WE AGREED TO CONVEY OUR INFORMA-  
TION FOR BELGIAN STUDY AND CLARIFICATION. DUTCH REP  
(TIEMENSMA) DEFENDED THEIR SYSTEM, WHICH IS BASED UPON  
WEIGHT OF VEHICLE, CITING THE FACT THAT DUTCH ROADS ARE  
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CONSTRUCTED ON SOFT SOIL. WE OBSERVED THAT, THOUGH U.S.  
CARS MAY HAVE HIGHER DEAD WEIGHT, LARGER TIRES ON U.S.  
CARS MAY REDUCE WEIGHT AT ROAD CONTACT POINT TO LEVEL  
BELOW EUROPEAN CARS. DUTCH CLAIMED THAT WHAT DISCRIMINA-  
TION MIGHT EXIST WAS HARDLY SIGNIFICANT ENOUGH TO ACT AS  
TRADE BARRIER. FRENCH STATED THAT NEW ROAD TAX SCHEME  
BASED ON FUEL CONSUMPTION HAD BEEN PUT INTO EFFECT ON  
JANUARY 1, 1978, AND PROMISED TO SUBMIT TO U.S. DATA ON  
NEW SYSTEM. GERMAN REP (STEFAN) MADE ARGUMENT THAT ROAD  
TAXES IN HIS COUNTRY ARE A VERY SMALL PERCENTAGE OF THE  
COST OF BUYING AND OPERATING AN AUTOMOBILE. ROAD TAX  
SYSTEM IS BASED ON CYLINDER CAPACITY; WE OBSERVED THAT  
GERMAN TAX SYSTEM DOESN'T APPEAR TO BE RELATED TO FUEL  
EFFICIENCY. SYSTEM HAS BEEN IN EFFECT FOR OVER 20 YEARS  
AND GERMANS STATED CHANGE IS NOT SEEN AS NECESSARY AT THIS  
TIME. ITALIAN REP (GALDI) STATED THAT THEIR SYSTEM HAD  
ORIGINATED IN THE FIFTIES AND WAS BASED UPON FISCAL  
POLICY (COST OF AUTOMOBILES) AS WELL AS FUEL CONSUMPTION.  
THE FISCAL ELEMENT, HOWEVER, HAS BEEN REDUCED IN RECENT  
YEARS AND THE GASOLINE TAX HAS RISEN SHARPLY. ITALIANS  
ALSO PROMISED TO SUPPLY U.S. WITH FURTHER DATA. ABBOTT  
SUMMED UP DISCUSSION WITH COMMENT THAT U.S. IS REQUESTING

WHOLESALE CHANGE IN SEVERAL MEMBER STATE ROAD TAX SYSTEMS  
FOR (MARGINAL) CONVENIENCE OF U.S. EXPORTERS. HE FEELS  
THAT A SOLUTION TO THE PROBLEM COULD NOT BE FOUND ON THIS  
BASIS.

(B) HALLMARKING OF JEWELRY (UK, FRANCE, ITALY).  
NEITHER UK NOR FRENCH REPOAD MUCH INFORMATION ON THEIR  
RESPECTIVE NATIONAL PRACTICES. UK REP (HUNT) DENIED  
U.S. ACCUSATION THAT THERE WAS A DISCRIMINATION IN RATES  
CHARGED BY THE ASSAY OFFICE. WITHOUT SUBSTANTIATING  
MATERIAL U.S. COULD ONLY STATE THAT THIS WAS U.S. INDUSTRY  
CONTENTION AND USG COULD NOT PRESENT SPECIFIC EXAMPLES AT  
THIS TIME. ON INCONVENIENCES TO U.S. EXPORTERS CAUSED  
BY NECESSITY TO HAVE GOODS IN SEMIFINISHED FORM SENT TO  
UK FOR HALLMARKING, UK REP REQUESTED THAT THE U.S. SUBMIT  
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DOE-15 DOTE-00 MCE-00 DOEE-00 SSO-00 HEW-04 /172 W  
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P 121301Z APR 78  
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ACTION STR PASS ELECTRICALLY; STR PASS CODEL

SPECIFIC EXAMPLES SO THAT UK COULD STUDY POSSIBILITY OF

ALTERNATIVE PROCEDURES. ITALIAN AND FRENCH REPS WERE NOT IN A POSITION TO COMMENT ON THEIR SYSTEMS, BUT PROMISED TO DISCUSS PROBLEM WITH APPROPRIATE OFFICIALS AND TO REPORT FURTHER AT NEXT SESSION. (COMMENT: MTN DEL HAD INSUFFICIENT BACKGROUND INFORMATION TO PROVOKE USEFUL DISCUSSION. WE WOULD APPRECIATE FURTHER DATA SO THAT UK REQUEST (SEE ABOVE) CAN BE MET. END COMMENT.) COMMISSION COMMENTED THAT PREVIOUS COMMUNITY ATTEMPT TO HARMONIZE MEMBER STATES' PRACTICES HAD FAILED, SO IT WAS NOT OPTIMISTIC THAT SOLUTIONS WOULD BE FOUND.

3. REMAINDER OF U.S. REQUESTS REVIEWED ON A COUNTRY-BY-COUNTRY BASIS:

(A) BELGIUM (MAXIMUM PRICES ON PHARMACEUTICALS).  
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BELGIAN REP DOUBTED THAT THE U.S. STILL HAD A PROBLEM. HE CITED DECREE OF DECEMBER 11, 1975, WHICH STATES THAT TRANSPORT COSTS AND ALL OTHER RELATED IMPORT COSTS COULD BE ONE FACTOR TAKEN INTO ACCOUNT BY THOSE SETTING MAXIMUM PRICE LEVELS. HE ALSO STATED THAT A LARGE MAJORITY OF U.S. DRUGS SOLD IN BELGIUM WERE SOLD THROUGH LOCAL SUBSIDIARIES OF U.S. FIRMS. WE REPLIED THAT OUR OWN INFORMATION ON THIS SUBJECT WAS DATED AND THAT WE WOULD LIKE INFORMATION ON THE BELGIAN DECREE SO THAT WASHINGTON COULD STUDY ITS IMPACT WITH OUR INDUSTRY ADVISORS.

(B) ITALY (PATENT INFRINGEMENT ON PHARMACEUTICALS; FILM ADMISSION TAXES; AND PRICE CEILINGS ON PHARMACEUTICALS). ITALIAN REP CITED PRESENT PARLIAMENTARY CONSIDERATION OF LAW PROVIDING FOR GRANTING OF PATENT PROTECTION ON PHARMACEUTICALS. U.S. SAID IT WAS ENCOURAGED TO LEARN OF ITALIAN ACTION, BUT WE WERE CONCERNED THAT IMPLEMENTATION (AND FULL ADHERENCE TO THE EUROPEAN PATENT CONVENTION) COULD BE STAGED OVER A 10-YEAR TRANSITION PERIOD. ITALIAN REP DENIED THAT THIS WOULD BE THE CASE AND PROMISED TO SUBMIT FURTHER INFORMATION ON IMPLEMENTATION OF CONTEMPLATED LAW. ON FILM ADMISSIONS TAX AND PRICE CEILINGS, ITALIAN REP STATED THAT GOVERNMENT MINISTRIES WERE PREPARING DETAILED PAPERS WHICH MIGHT BE AVAILABLE IN TWO TO THREE WEEKS.

(C) FRANCE (RESTRICTIONS ON ESTABLISHING SUBSIDIARIES AND RESTRICTIONS ON AIRCRAFT SALES). FRENCH REP QUESTIONED WHETHER OUR COMPLAINT AGAINST INVESTMENT RESTRICTIONS (COMPUTER PERIPHERALS) WAS BEING AIRED IN THE PROPER FORUM, BUT AGREED TO SEEK AN EXPLANATION FROM THE MINISTRY RESPONSIBLE FOR ALLEGED PRACTICE. (SHE RECOMMENDED IN PRIVATE THAT THE U.S. SHOULD BRING MATTER

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BEFORE DREE.) ON PROBLEM OF FRENCH AIRCRAFT POLICY, ABBOTT DEFENDED FRENCH PRACTICES, NOTING THAT THE QUOTA WAS AN ELASTIC ONE, AND THAT U.S. HAD SOLD LARGE NUMBERS OF AIRCRAFT TO AIR FRANCE. U.S. DEL MADE POINT THAT U.S. OFFER ON AIRCRAFT (DUTY ELIMINATION) WAS LINKED TO AMELIORATION OF FOREIGN ACTIONS, WHETHER DE FACTO OR DE JURE, WHICH RESTRICT PURCHASES OF U.S.-BUILT AIRCRAFT.

(D) GERMANY ("ROTE" LIST). GERMAN REP STATED THAT "ROTE" LIST WAS A PRIVATE PUBLICATION WITH NO OFFICIAL CHARACTER. HE NOTED THAT ROTE LIST CONTAINS MANY PHARMACEUTICALS PRODUCED IN FOREIGN COUNTRIES BUT CONTAINS ONLY PRODUCTS WHERE THE IMPORTER HAS GERMAN GOVERNMENT AUTHORIZATION TO SELL THAT PHARMACEUTICAL. FOCUSING ON THE QUESTION OF AUTHORIZATION, HE NOTED THIS REQUIREMENT WAS NECESSARY FOR PUBLIC HEALTH REASONS AND OBSERVED THAT U.S. HAS SIMILAR REQUIREMENTS. HE STATED THAT U.S. PHARMACEUTICALS WERE LISTED IN THIS DOCUMENT WHERE U.S. PRODUCERS HAVE AN AGENT IN THE FRG. GERMAN REP ALSO POINTED OUT THAT THE U.S. HAS ITS OWN "ROTE" LIST -- THE PHYSICIAN'S DESK REFERENCE. ABBOTT NOTED THAT DRAFT CODE ON STANDARDS WOULD PRESUMABLY COVER POSSIBLE COMPLAINTS ARISING FROM THIS PRACTICE.

(E) UNITED KINGDOM (RESTRICTIONS ON PURCHASES OF AIRCRAFT AND COMPONENTS; NOTIFICATION PROCEDURES ON NORTH SEA CONTRACTS). BRITISH REP ASSERTED THAT IN GENERAL THERE WERE NO RESTRICTIONS OF A STATUTORY OR ADMINISTRATIVE NATURE WHICH INHIBIT BRITISH AIRWAYS OR OTHER AIR CARRIERS IN BRITAIN FROM PURCHASING FOREIGN AIRCRAFT OR ENGINES. HE NOTED THIS WAS AN AREA OF HIGHLY CHARGED POLITICAL DEBATE IN UK AND OBLIQUELY ADMITTED THAT UK GOVERNMENT DID EXERT SOME PRESSURE ON STATE-OWNED BRITISH AIRWAYS TO "BUY BRITISH." HE QUERIED U.S. DEL ON WHAT KIND OF SOLUTION U.S. HAD IN MIND; HE HINTED THAT A U.S. REQUEST THAT UK GOVERNMENT STOP THIS PRACTICE WOULD NOT BE GIVEN

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SERIOUS CONSIDERATION. U.S. DEL STATED THAT WE WANTED ELIMINATION OF THE PRACTICE AND NOTED THAT MAINTENANCE OF U.S. TARIFF OFFER ON AIRCRAFT AND ENGINES MIGHT BE CONTINGENT UPON UK AVOIDANCE OF DE FACTO DISCRIMINATION

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TO SECSTATE WASHDC PRIORITY 8249  
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ACTION STR PASS ELECTRICALLY; STR PASS CODEL

AGAINST U.S. AIRCRAFT AND PARTS. REGARDING NORTH SEA  
CONTRACTS, HUNT NOTED THAT BASIS FOR THIS MEASURE IS A  
"VOLUNTARY" AGREEMENT BETWEEN UK OFFSHORE OIL PRODUCERS  
ASSOCIATION AND UK GOVERNMENT. OIL PRODUCERS PROVIDE A  
VARIETY OF EQUIPMENT PURCHASE DATA SUCH AS PRICE, DELIVERY  
TERMS, ETC. PURPOSE OF REPORTING IS TO MONITOR CAPABILITY  
AND EFFICIENCY OF UK OIL EQUIPMENT INDUSTRY. HE ASSERTED  
THAT THERE IS NO DISCRIMINATION INVOLVED IN TERMS OF ONE  
OR ANOTHER OPERATOR CONCERNING SUPPLIES FROM WHATEVER  
SOURCE, BUT SAID THAT WITHOUT THIS FREE FLOW OF INFORMA-  
TION MUCH OF PURCHASING WOULD BE "IN-HOUSE" BY OIL  
PRODUCERS. HE NOTED THAT THIS INFORMATION IS PROVIDED  
BY OIL PRODUCERS ONLY AFTER THE ORDER IS PLACED AND THE  
INFORMATION IS SUBSEQUENTLY PUBLISHED IN THE ANNUAL BLUE  
BOOK. PURPOSE IS TO INCREASE TRANSPARENCY. HUNT ASKED  
WHETHER U.S. CAN PROVIDE SPECIFIC INFORMATION OR REFERENCE  
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TO WAY ALLEGED PRESSURE IS USED BY HMG IN DECIDING AMONG

DRILLING CONTRACT APPLICATIONS.

4. COMMENT. SESSION WAS MOST USEFUL ON TOPICS FOR WHICH U.S. DEL WAS WELL-EQUIPPED WITH STATISTICAL AND QUALITATIVE DATA. THIS WAS THE CASE ON ROAD TAXES AND TO SOME DEGREE ON PHARMACEUTICAL RESTRICTIONS. IN OTHER AREAS WE WERE UNABLE TO EXPLORE ISSUE BECAUSE OF LACK OF INFORMATION. WE WOULD APPRECIATE RECEIVING MORE DETAILED ARGUMENTATION AND SUPPORTING DATA ON THOSE MEASURES WASHINGTON CONSIDERS SHOULD BE GIVEN PRIORITY AT THESE SESSIONS. END COMMENT.

5. DRAFTED BY MARSH. MCDONALD

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## Message Attributes

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**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
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**Original Handling Restrictions:** n/a  
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